

Chapter 1

Introduction

THIS first comprehensive plan for the future of the federal courts responds to a growing awareness within and without the courts that the accelerating pace of social change requires public institutions to anticipate likely future challenges and opportunities. The Constitution vests the federal courts with the judicial power of the United States, power which the courts are bound to exercise justly, speedily and economically. To meet that responsibility, the courts must first and above all preserve the rule of law. At the same time, they must respond to the changing needs of society, litigants, and the practicing bar. The federal courts intend that this first plan, along with the planning process that it has initiated, will foster those two imperatives.

Why Plan?

Many of our nation's state courts have already begun planning efforts through "futures commissions" and long range planning bodies. This federal court planning process responds to the same imperatives, mentioned above, that have led the state courts to plan about the future of the justice system. Indeed, there is a universality about doing justice that transcends court systems. Many of the issues important to the state courts—equal justice, public trust and understanding, effective use of technology, alternative dispute resolution, obtaining adequate resources, and governance—are no less critical to the federal courts.

Planning for the federal courts, however, requires an awareness of their unique role in the nation's justice system and the special context in which they operate. State courts exist to serve all the justice needs of a geographic area; their mission is relatively straight-forward. The federal courts, on the other hand, are creatures of a *federal* Constitution. The Constitution charges Congress with ensuring that the federal courts coexist with, supplement and only rarely supplant the role of their state counterparts. As Alexander Hamilton noted "[T]he national and state systems are to be regarded as ONE WHOLE."¹

Determining the appropriate role for the federal courts has provided the greatest challenge for this planning process. In the words of John Jay, the country's first Chief Justice, "To provide against discord between National and State jurisdiction, to render them auxiliary instead of hostile to each other, and so to connect both as to leave each sufficiently independent and yet sufficiently combined was and will be arduous."² Much of the plan that follows is driven by the need to carry out this "arduous" task.

Many other challenges also have affected this planning process. The federal

¹ THE FEDERALIST No. 82, at 494 (Alexander Hamilton) (Clinton Rossiter ed. 1961).

² Charge to Grand Jury at the first session of the Circuit Court for the District of New York (Apr. 4, 1790). I CHARLES WARREN, THE SUPREME COURT IN U.S. HISTORY 61 (photo. reprint 1987) (1926) (quoting COLUMBIAN CENTINEL, May 29, 1790).

judiciary is largely reactive to external forces beyond its control. Congress sets the courts' budgets and the scope of federal jurisdiction; the executive branch determines the government's prosecutorial and civil litigation strategies that have substantial impact on the courts' workload. The judicial branch has only a limited ability to influence these actors.

Moreover, the structure of the federal judiciary is, by its nature, non-hierarchical. Unlike business organizations that can enforce a strategic plan from the top down, the federal judiciary's work is carried out by judges whose independence, guaranteed by the U.S. Constitution, makes regimentation impossible as well as undesirable.

Social and cultural changes, generally unpredictable and certainly uncontrollable by court planning processes, have even greater effects on the courts' workload. The extraordinary increase in illegal drug importation and use has transformed the work of federal district courts, yet its scope was little anticipated even ten years ago. Given all the uncertainty that courts face, and the meager tools they have to control their fate, a skeptic might ask why they should bother with long range planning at all.

The answer is straightforward, but not obvious. Planning can orient the courts to likely and possible alternative futures. It can enable judges and administrators to think strategically about how to allocate financial and human resources most effectively under various possible alternatives. No organization can control completely the environment in which it operates, nor predict absolutely the future that it faces; neither long range planning nor alternative futures planning holds out any such promise. Indeed, if planning's purpose were to predict the future in order to master it, planning would indeed be a fool's errand.

Planning entails preservation as well as change—the preservation of cherished, historic or possibly threatened values. It is not about conforming tomorrow's courts to all shifting trends of an uncharted future. But at its best, planning can help an organization clarify its mission and the values it seeks to preserve and promote, to articulate those values in goals or objectives, and to take effective action to achieve them.

History of Federal Courts Planning and Genesis of the Current Plan

The current planning process is not the federal courts' first. Statutes establishing the Conference of Senior Circuit Judges (1922) (the forerunner of the Judicial Conference of the United States), the Administrative Office of the United States Courts (1939), and the Federal Judicial Center (1967), and the subsequent growth of those organizations, arose from a recognition by Congress and the judiciary that the federal courts should have a national capacity to identify and respond to opportunities and barriers to the effective administration of justice. At the regional level, the creation of circuit judicial councils in 1939 responded to a similar need. And at the local level, many individual courts have for decades developed their own methods to assess and respond to the need for change.

In 1990, the Federal Courts Study Committee Report took a significant step toward a long range plan. One of the Committee's administrative recommendations was that the judiciary should establish a "permanent capacity to determine long-term goals and develop strategy plans by which they can reach them." The federal courts responded to this recommendation through the creation of the Judicial Conference Committee on Long Range Planning and enhanced planning support capabilities

in the Administrative Office and the Federal Judicial Center.

Appendix B of the plan documents the history of the Judicial Conference's long range planning process from the inception of the Long Range Planning Committee, in March, 1991, to the present day. Here it suffices to note that the process has included: identification of the major planning areas confronting the judiciary; analysis of

forecasted trends; wide consultation with state and federal judges, lawyers from all segments of the nation's bar, officials of the executive and legislative branches, and experienced planners from the public and private sectors; and assessment of a range of policy alternatives that the judiciary might pursue on its own or recommend to other bodies. Far more remains to be done, but this first plan, it is hoped, will provide a strong beginning for what will follow.